IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.247 OF 1997

M/s.Christi Sahitya Prasarak,
21 HajarimalSomani Marg,
Mumbai-400 001, through its
Dirctor Shri Anil Ramesh Dahiwadkar,
aged adult, occup:service,
Poona's address: 67, Mahatma Gandhi
Road, Pune-411 001. Petitioner

vs.

1. Shri Bhaskar S. Gaikwad,
aged adult, occupation:service,
residing at A/2, Querry Road,
Bhandup, Mumbai-400 078.

2. The Presiding Officer,
5th Labour Court, Mumbai. Respondents

Mr.A.M.Joshi and Mr.S.D.Rayrikar for the petitioner.

Mr.K.S.Bapat with Mr.J.K.Desai for the respondent no.1.

CORAM : B.H. MARLAPALLE,J.

DATED : 29th September 2005

ORAL JUDGMENT.

This petition arises from the Award-Part I passed by the Labour Court at Mumbai on 23.7.1995 in Reference (IDA) No.225/1986. By the said Award, it has been held by the learned Judge of the Labour Court that the reference was maintainable and the issue raised by the management that the respondent was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for short, 'the Act'), has been answered against it.

2. The petitioner is a public Charitable Trust as well as a Society registered under the Bombay Public Trusts Act, 1950 and the Societies Registration Act, 1860. It is running and managing a number of book shops for promoting Christian Literature in particular but the Literatures at large in general. The respondent came to be appointed in the month of February 1964 by the petitioner as a clerk-cum-salesman. After about 19 years of service, he came to be promoted to the post of Acting Manager by an order dated 13.9.1983 and was given charge of the book shop at Mumbai. He was served with a charge-sheet on 20.4.1984 and a departmental enquiry was conducted into the said charges. The Enquiry Officer has submitted his report on 26.11.1984 and held the workman guilty of the charges levelled against him. Consequently, by an order dated 13.12.1984 the respondent came to be dismissed from service. He raised industrial dispute in support of his demand for reinstatement in service with full back wages and continuity in service on the ground that the said order of dismissal was illegal and void ab initio. The said demand came to be referred for adjudication in Reference (IDA) No.225/1986.

3. In the impugned Award-part I, the following three issues came to be decided as preliminary issues and

answered accordingly:

Sr. No.	Issue	Finding
1.	Whether the present Reference is maintainable?	Yes.
2.	Does the workman prove that the Enquiry conducted was not fair, legal and proper?	Yes.
3.	Whether the findings of the Trying Officer are perverse?	Does not arise.

4. While granting rule in this petition, by way of interim relief the execution and operation of the impugned order was stayed during the pendency of the petition, vide order dated 3.3.1997 and, consequently, the proceedings in Reference (IDA) No.225/1986 remained suspended.

5. Mr.Joshi, the learned counsel for the petitioner, by referring to the documentary evidence placed by both the parties on record as well as the oral depositions of the petitioner's witness Mr.Anil Dahiwadkar and the respondent-workman, submitted that the nature of the duties performed by the respondent on his promotion as acting manager was managerial and there was no scope for the Labour Court to discard the said evidence and record a finding against the management on the first

preliminary issue regarding the status of the respondent. It was urged that the duties performed by the respondent on his promotion to the post of acting manager excluded him from the sweep of the term "workman" as defined under Section 2(s) of the Act. Mr.K.S.Bapat, the learned counsel for the respondent-employee, on the other hand, has supported the Award and submitted that the designation given as "acting manager" was a camouflage and this higher label only remained on paper. As per Mr.Bapat, the respondent-employee neither discharged the work of managerial duties nor did he discharge supervisory duties and, therefore, he was not covered by the exception set out under Section 2(s) of the Act. It was also pointed out that the view taken by the Tribunal in the impugned order regarding the status of the respondent-employee is a possible view and, therefore, does not call for any interference under the supervisory powers of this Court under Article 227 of the Constitution if regards be had to the evidence adduced by both the parties. The respondent also claims that the duty list at Exhibit C-16 was never served on him along with the appointment order for the post of acting manager at Exhibit C-10. In addition, there were no subordinates under the respondent-employee and, thus, he was not required to supervise the work of any such subordinate, leave alone the power of appointment, grant

of leave, recommend punishment or award punishment to such subordinates.

6. At the first instance, the claim made by the respondent-employee before the Labour Court was that he did not receive the appointment order at Exhibit C-10 and he was never appointed to the post of acting manager as claimed by the employer. In his examination-in-chief he stated that the appointment letter dated 13.9.1983 was false and that he did not admit his designation as manager. He also denied to have written the letter dated 4.11.1983 wherein he had mentioned his designation as manager. He also stated that he was getting a monthly salary of Rs.600/- in the year 1989. When he was put to cross-examination, his statements in the examination-in-chief and more particular about the appointment order were falsified. In his cross-examination he stated, "The appointment letter dated 13.9.83 now shown to me is correct, the original appointment letter is with me, the copy of the said appointment letter is now shown to me is the same letter, the said appointment letter is signed by Mr.Dahivadkar and also countersigned by me, the said letter is at Exhibit C-30." He further proceeded to state that the duty list at Exhibit C-16 was not received by him. However, when the management witness Anil Dahiwadkar stepped into the witness box, he

emphatically stated that the duty list at Exhibit C-16 was served on the respondent-employee and he signed in acknowledgement thereof. This statement of the witness remained unchallenged during his cross-examination. The management witness also stated that the pay-scale for the post of manager was Rs.400-20-500-25-625-EB-30-775 plus dearness allowance and city allowance as per the rules. As per the management witness, at the time of dismissal the respondent was drawing a basic salary of Rs.480/- and with the dearness allowance and city allowance, his total monthly emoluments came to Rs.1043/-.

7. The duty list at Exhibit C-16 and served on the respondent-employee along with the order of appointment at Exhibit C-10 described his duties as under:

(a) He will be responsible to built up the business of his shop and will make it a viable unit. Viable unit will mean a Unit which is meeting its expresses and is making profits to the satisfaction of the management.

(b) He will maintain and preserve all the records, registers, documents and valuable securities in good condition and uptodate as required by the Chartered Accountant, Charity Commissioner, Income-tax, and Sales-tax Officers, Government rules and regulations, local, Municipal or Corporation authorities as well as any other records asked and required by the Management.

(c) It will be his duty to achieve the

annual sales target set for his shop by the management.

(d) He will work in accordance with the policies laid down by the management from time to time.

(e) He will strive to achieve the basic purpose of CSP to promote and make available Christian literature particularly in Marathi.

(f) He will pain and undertake the book displays and book tours to the churches and Christian institutions in his areas as approved by the Director.

(g) He will supervise the work of the staff under him and will be responsible for them. He will submit a monthly confidential report of his staff members to the Director.

(h) He will prepare the annual budget of his shop in consultation with the Director and will keep the expenses within the budgeted amount.

(i) He will submit a monthly financial report to the Director by the 10th of each month.

(j) He will be responsible for the overall control of the shop including finances, stocks, personal accounts, public relations and communications etc.

(k) He will deposit the exact amount of each cash sales proceeding for the previous day in the bank on the following day.

(l) He will take inventory of stock as and when required by the Director.

(m) He will not employ any staff except the casual labourers.

(n) He will work under the control and supervision of the Director and will be governed by the terms and conditions of employment for CSP staff.

(o) He will perform all other duties

assigned to him by the Director."

8. The management's witness emphatically stated that the respondent-employee was performing and/or was responsible for the duties set out in Exhibit C-16. Though this statement could not be impeached in any manner, in the cross-examination of this witness the respondent himself in his reply dated 25.8.1984 to the charge-sheet dated 20.8.1984 stated, interalia, thus: "I respectfully state that by your letter dated 13.9.1983 you appointed me as an acting Manager on probation basis for the period of one year. In the said appointment letter you have put the condition that I should increase the scale of books from Rs.45,000/- to Rs.65,000/- and let me submit you at this stage that during the period of my probation within the six months period I completed the target of Rs.65,000/-. Thereafter by my letter dated 12.3.1984, 19.3.1984, 18.4.1984 I repeatedly requested you to confirm me as a Manager, but it is the matter of great surprise that instead of confirming me as a Manager, you have issued the charge-sheet with malafide intention to terminate my services. ..... I further submit that being the acting Manager it was my prime responsibility and duty to minimise the expenses and make the financial position strong of CSP at Bombay. Therefore, in good faith I verbally suggested to Shri S.K.Wankhede that as

his services are not required, he should not come on duty. However, I emphatically deny that I have not consulted with my superior before stopping the work of Shri Wankhede. I say that by my letter dated 4.9.1983, I informed him that I have already communicated that Shri Wankhede's services are not required by the end of October 1983.".

9. Thus the evidence placed on record by the petitioner through the deposition of its witness Mr.Anil Dahiwadkar as well as the documentary evidence, proved beyond doubt that the respondent-employee was responsible for the CSP book shop at Mumbai and he had subordinates under him. There can be no doubt that the management proved beyond doubt that he was at least discharging the functions substantially supervisory in nature and to some extent administrative/managerial. His monthly salary was over Rs.1,000/- and the order of dismissal is dated 13.12.1984 i.e. prior to the amendment in Section 2(s) of the Act raising the salary limit from Rs.500/- to Rs.1600/- per month. The respondent fell in the Exception IV under Section 2(s) of the Act. The findings recorded by the Labour Court on the basis of the qualifications required for the post of Manager are unsustainable. What was required to be examined was the nature of the duties performed by the respondent-employee so as to determine whether he was a

"workman" within the meaning of Section 2(s) of the Act or he was out of the purview of the said term. The reasoning set out by the Labour Court is not supported by the evidence and in fact it is contrary to the evidence on record. Consequently, the findings are perverse. Once the respondent is held to be not a workman within the meaning of the Act, no adjudication is required on the other two issues framed by the Labour Court in the impugned Award. The issue no.1 decided by the Labour Court was required to be answered in the negative and the impugned Award is manifestly erroneous in answering the said issue in the affirmative. Thus the impugned Award is required tobe set aside by exercising the powers of superintendence under Article 227 of the Constitution of India.

10. In the premises, this petition succeeds and the same is hereby allowed. The impugned Award dated 23.7.1995 is quashed and set aside and consequently, the Reference (IDA) No.225/1986 stands dismissed as not maintainable. Rule is made absolute accordingly with no order as to costs.

(B.H.MARLAPALLE,J.)